

Appendix A

DEFINITION OF WETLANDS BY FEDERAL AND STATE REGULATORY AGENCIES

Currently, three different wetland definitions are used in Wisconsin: a State definition; a U. S. Army Corps of Engineers and U. S. Environmental Protection Agency definition; and a U. S. Department of Agriculture, Natural Resources Conservation Service definition, for administration of the Federal Food Security Act.

The State wetland definition is set forth in s.23.32(1) of the Wisconsin Statutes as:

An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

The wetland definition used by the State requires that wetland areas need only be "capable of supporting aquatic or hydrophytic vegetation," that is, wetland vegetation does not actually have to be present to classify an area as a wetland.

The wetland definition used by the U. S. Army Corps of Engineers and U. S. Environmental Protection Agency (EPA) in the administration of the Section 404 program of the Federal Clean Water Act defines wetlands as:

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (EPA, 40 CFR 230.3 and CE, 33 CFR 328.3)

The wetland definition used by the Corps and the EPA requires that for a site to be classified as a wetland, wetland vegetation must actually be present on the site.

The wetland definition used by the U. S. Department of Agriculture, Natural Resources Conservation Service (NRCS) for the administration of the Federal Food Security Act defines wetlands as:

Areas that have a predominance of hydric soils and that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils. (National Food Security Act Manual, 1988)

The wetland definition used by the NRCS requires that the hydrology, hydrophytic vegetation, and hydric soils, as defined by the National Technical Committee for Hydric Soils, all be present to meet the definitional requirements.

The major difference between these two Federal definitions relate to soil conditions. The Corps and the EPA definition includes inundated or saturated soils, which may or may not exhibit hydric soil characteristics. For example, a recently constructed highway may cause a former upland area to flood routinely. The subsequent soil inundation and saturation may now be at a "frequency and duration sufficient to support a prevalence of hydrophytic vegetation." The now flooded and saturated soils will retain many of their upland soil characteristics, such as soil color and lack of mottling in the root zone and under the Corp and the EPA definition would be classified as a wetland. Under the NRCS definition, however, the area would not be classified as a wetland because it lacks hydric soils.

In summary, the State of Wisconsin wetland definition, as a practical matter, requires a finding of the presence of two of the three basic wetland criteria: vegetation, soils, and hydrology. The soils criterion is addressed in a manner similar to that used in the Corp and the EPA definition. Both Federal definitions require a finding of

the presence of all three wetland criteria. The Federal definitions differ only with respect to soils, the NRCS treatment being more narrow in focus requiring the presence of hydric soils.

In January 1994, the Federal agencies concerned entered into a Memorandum of Agreement to promote consistency between the Clean Water Act and Food Security Act wetland protection programs. Essentially, under this agreement, nonfarmed vegetated wetlands are to be delineated using the Corps and the EPA definition, while wetlands farmed prior to December 23, 1985, and still maintained in agricultural production are to be delineated using the NRCS definition.

Since the State of Wisconsin wetland definition is Statutory, that definition must be used by counties and local units of government in the regulation of what are defined as shoreland-wetlands. In addition, all Department of Natural Resources regulatory-permitting and approval programs require use of the State definition.

As indicated in Chapter III of this report, the Regional Planning Commission maintains an inventory of wetlands in the Southeastern Wisconsin Region and utilizes that inventory in the delineation of environmental corridors and other environmentally sensitive areas. The definition of wetlands adopted by the Commission in all regional planning activities is identical to the Corps and the EPA definition. Application of that definition, however, generally results in wetland delineations that are not significantly different than delineations utilizing the State definition. Application of the NRCS definition may, however, result in delineations significantly different from those using the State or Corps and the EPA definition.